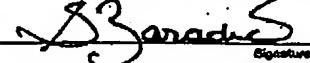


PTO-2008 (00-04)

Approved for use through 07/01/2005. OMB 0651-0031
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| | | |
|--|--|---------------------------------------|
| TERMINAL DISCLAIMER TO OBLIVIATE A DOUBLE PATENTING REJECTION OVER A "PRIOR" PATENT | | Docket Number (Optional) CD-0787Q1 |
| In re Application of: <u>Andrews et al.</u> | | |
| Application No.: <u>10/786,886</u> | | |
| Filed: <u>02/25/2004</u> | | |
| For: <u>Crystalline antifungal polymorph</u> | | |
| <p>The owner*, <u>Schering Corporation</u>, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any prior patent, No. <u>6,713,481</u>, as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.</p> <p>In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:</p> <ul style="list-style-type: none"> express or failure to pay a maintenance fee; is held unenforceable; is found invalid by a court of competent jurisdiction; is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321; has all claims canceled by a reexamination certificate; is released; or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer. | | |
| Check either box 1 or 2 below, if appropriate. | | |
| <p>1. <input type="checkbox"/> For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.</p> <p>I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such wilful false statements may jeopardize the validity of the application or any patent issued thereon.</p> | | |
| <p>2. <input checked="" type="checkbox"/> The undersigned is an attorney or agent of record. Reg. No. <u>45,097</u></p> <p> Signature</p> <p><u>11/22/04</u> Date</p> <p><u>Sandy Zaradic</u> Typed or printed name</p> <p><u>908-298-7221</u> Telephone Number</p> | | |
| <p><input checked="" type="checkbox"/> Terminal disclaimer fee under 37 CFR 1.20(d) included.</p> <p>WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorizations on PTO-2038.</p> <p>* Statement under 37 CFR 3.78(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTC/613/06 may be used for making this certification. See MPEP § 234.</p> | | |

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PTO/SB/17 (10-04)

Approved for use through 07/31/2006. GMB 0511-0022
U.S. Patent and Trademark Office U.S. DEPARTMENT OF COMMERCE

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FEE TRANSMITTAL

for FY 2005

Effective 10/01/2004, Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (i) \$110.00

Complete If Known

| | |
|----------------------|---------------------|
| Application Number | 10/786,886 |
| Filing Date | 02/15/2004 |
| First Named Inventor | Andrews et al. |
| Examiner Name | Bernhardt, Emily B. |
| Art Unit | 1624 |
| Attorney Docket No. | CD0787Q1 |

METHOD OF PAYMENT (check all that apply)

| | | | | |
|--|--------------------------------------|--------------------------------------|--------------------------------|-------------------------------|
| <input type="checkbox"/> Check | <input type="checkbox"/> Credit card | <input type="checkbox"/> Money Order | <input type="checkbox"/> Other | <input type="checkbox"/> None |
| <input checked="" type="checkbox"/> Deposit Account: | | | | |
| Deposit Account Number 19-0365 | | | | |
| Schering-Plough Corporation | | | | |

The Director is authorized to: (check off that apply)

Charge fees indicated below Credit any overpayments

Charge any additional fees or any underpayment of fees

Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

| | | | |
|-------------------|----------|------------------------|----------|
| Large Entity | Fee | Fee Description | Fee Paid |
| Code (S) | Code (S) | | |
| 1001 1700 | 2001 393 | Utility filing fee | |
| 1002 550 | 2002 175 | Design filing fee | |
| 1003 550 | 2003 273 | Plant filing fee | |
| 1004 750 | 2004 398 | Reissue filing fee | |
| 1005 160 | 2005 80 | Provisional filing fee | |
| SUBTOTAL (i) (\$) | | | |

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

| | | | | |
|--------------------|------|---|---|--|
| Total Claims | -20* | = | X | |
| Independent | -3- | = | X | |
| Multiple Dependent | | | | |

| | | | |
|-------------------|--------------|---|----------|
| Large Entity | Small Entity | Fee Description | Fee Paid |
| Fee Code (S) | Fee Code (S) | | |
| 1202 18 | 2202 9 | Claims in excess of 20 | |
| 1201 88 | 2201 44 | Independent claims in excess of 3 | |
| 1203 300 | 2203 150 | Multiple dependent claims, if not paid | |
| 1204 88 | 2204 44 | Reissue independent claims over original patent | |
| 1205 18 | 2205 9 | Reissue claims in excess of 20 and over original patent | |
| SUBTOTAL (i) (\$) | | | |

* For numbers previously paid, if greater; For Reissues, add 150

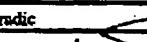
FEE CALCULATION (continued)

3. ADDITIONAL FEES

| | | | |
|----------------------------------|--------------|---|----------|
| Large Entity | Small Entity | | |
| Fee Code (S) | Fee Code (S) | Fee Description | Fee Paid |
| 1051 130 | 2051 65 | Surcharge - late filing fee or oath | |
| 1052 50 | 2052 25 | Surcharge - late provisional filing fee or cover sheet | |
| 1053 130 | 1053 130 | Non-English specification | |
| 1012 2,520 | 1812 2,520 | For filing a request for ex parte reexamination | |
| 1804 920* | 1804 920* | Requesting publication of SIR prior to Examiner action | |
| 1805 1,840* | 1805 1,840* | Requesting publication of SIR after Examiner action | |
| 1251 110 | 2251 65 | Extension for reply within first month | |
| 1252 420 | 2252 215 | Extension for reply within second month | |
| 1253 980 | 2253 480 | Extension for reply within third month | |
| 1254 1,530 | 2254 785 | Extension for reply within fourth month | |
| 1255 2,000 | 2255 1,040 | Extension for reply within fifth month | |
| 1401 340 | 2401 170 | Notice of Appeal | |
| 1402 340 | 2402 170 | Filing a brief in support of an appeal | |
| 1403 300 | 2403 150 | Request for oral hearing | |
| 1451 1,610 | 1451 1,610 | Petition to institute a public use proceeding | |
| 1452 110 | 2452 55 | Petition to revive - unavoidable | |
| 1453 1,350 | 2453 685 | Petition to revive - unintentional | |
| 1501 1,370 | 2501 685 | Utility issue fee (or release) | |
| 1502 480 | 2502 245 | Design issue fee | |
| 1503 680 | 2503 330 | Plant issue fee | |
| 1460 130 | 1460 130 | Petitions to the Commissioner | |
| 1807 50 | 1807 50 | Processing fee under 37 CFR 1.17(q) | |
| 1808 150 | 1808 150 | Submission of Information Disclosure Stmt | |
| 8021 40 | 8021 40 | Recording each patent assignment per property (less number of properties) | |
| 1809 700 | 2809 365 | Filing a submission after final rejection (37 CFR 1.128(a)) | |
| 1810 700 | 2810 355 | For each additional invention to be examined (37 CFR 1.128(p)) | |
| 1801 700 | 2801 205 | Request for Continued Examination (RCE) | |
| 1803 600 | 1802 200 | Request for expedited examination of a design application | |
| Other fee (specify) | | Terminal Disclaimer over Prior Patent | \$110.00 |
| Reduced by Basic Filing Fee Paid | | SUBTOTAL (i) (\$) | 110.00 |

SUBMITTED BY (Type or Print)

(Complete if applicable)

| | | | | |
|----------------|---|--------------------------------|-------------------|------------------------|
| Name (Printed) | Sandy Zaradic | Telephone No. (Area and Local) | 45,997 | Telephone 908-298-7221 |
| Signature |  | Date | November 22, 2004 | |

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